

DOCUMENT RESUME

ED 478 270

UD 035 791

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TITLE Low-Income Fathers and Child Support: Starting Off on the Right Track. Final Report.
INSTITUTION Policy Studies Inc., Denver, CO.
SPONS AGENCY Annie E. Casey Foundation, Baltimore, MD.
PUB DATE 2003-01-30
NOTE 61p.
AVAILABLE FROM Policy Studies Inc., 999 18th Street, Suite 1000, Denver, CO 80202. Tel: 303-863-0900; e-mail: Pleger@policy-studies.com.
PUB TYPE Reports - Evaluative (142)
EDRS PRICE EDRS Price MF01/PC03 Plus Postage.
DESCRIPTORS *Child Support; Child Welfare; *Fathers; *Low Income Groups; One Parent Family ; Parent Responsibility; *Welfare Recipients
IDENTIFIERS *Child Support Enforcement; Personal Responsibility and Work Opp Recon Act

ABSTRACT

The child support reform provisions within the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) have been markedly successful in improving child support enforcement efforts. Child support is an important part of the mix of supports necessary to assist welfare recipients to make the transition to work and self-sufficiency. Now, post-PRWORA, there is a greater focus on the low income fathers who are expected to pay child support. This report examines the treatment of low income fathers in the child support system in the United States and how the system could be improved. It suggests that the time of establishment of the child support order and shortly thereafter is the key time for the child support agency to establish a more positive relationship with low income fathers. Improving this "up front" process could increase both financial and emotional support for children. The report analyzes default order practices, examines best state practices, and reviews and analyzes selected international practices. It includes recommendations for child support programs, state legislative action, and federal action. The analysis concludes that three changes to the child support system are of particular importance: reducing the proportion of orders entered by default, setting realistic child support orders at the outset, and making adjustments to orders to reflect changes in circumstances. (Contains 16 references.) (SM)

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Low-Income Fathers and Child Support: Starting Off on the Right Track

FINAL REPORT

January 30, 2003

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Annie E. Casey Foundation

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Abstract

The child support reform provisions within the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) have been markedly successful in improving child support enforcement efforts. Child support is an important part of the mix of supports necessary to assist welfare recipients to make the transition to work and self-sufficiency. Now, post-PRWORA, there is a greater focus on the low-income fathers who are expected to pay child support.

This report examines the treatment of low-income fathers in the child support system in the U.S. and how the system could be improved. The report suggests that the time of establishment of the child support order and shortly thereafter is the key time for the child support agency to establish a more positive relationship with low-income fathers. Improving this "up-front" process could increase both financial and emotional support for children. The report analyzes default order practices, examines best state practices, and reviews and analyzes selected international practices. The report includes recommendations for child support programs, state legislative action, and federal action. The analysis concludes that three changes to the child support system are of particular importance: 1) reducing the proportion of orders entered by default; 2) setting realistic child support orders at the outset; and 3) making adjustments to orders to reflect changes in circumstances.



Low-Income Fathers and Child Support: Starting Off on the Right Track

Paul Legler
Policy Studies Inc.

INTRODUCTION

More than half the children born today are likely to spend some time in a single parent family. Children in these families—most of which are headed by mothers—face a much higher risk of living in poverty. Having financial support from both parents can make a difference if these children are going to have a realistic chance to escape poverty. Child support provides the transfer mechanism for fathers to contribute to the financial support of children in single parent families.¹

Child support has become even more important in the post-welfare reform era as more and more single parent families move off the welfare rolls. Child support is sometimes called the “last safety net” for low-income, single parent families, now faced with time limits in Temporary Assistance to Needy Families (TANF) programs. Child support is a critical source of financial support for these low-income families struggling to combine work with non-welfare supports—such as childcare, health care, and tax credits—in an effort to climb out of poverty. Yet, despite major improvements in child support enforcement in the past decade, far too many poor, single parent families do not receive the child support to which they are entitled.

There is also a growing recognition that, in addition to financial support, children need the connection with and the emotional support of both parents. Sometimes, however, the child support system is not supportive of fathers’ efforts to provide emotional support to their children. So the child support system faces a tough challenge—increasing the amount of financial support provided by fathers, who are often poor themselves, while at the same time encouraging the emotional connection between fathers and their children.

The policy community has begun to reevaluate the potential role of low-income noncustodial fathers in the lives of their children. Many commentators have called for an increase in services to these fathers to assist them in contributing to the emotional and financial support of their children. Recent policy initiatives have been based upon the premise that the birth of the child presents a unique opportunity to get young, unwed fathers involved in their children’s lives and to increase their ability to support their children. Indeed, there is research to suggest that the birth of the child may be a “magical moment” when the relationship between the father, mother, and child is at a peak.²



Interventions to build upon and strengthen the family relationship at this point have promising potential.

But while the child's birth may be a "magical moment" in terms of the parents' relationship, it may not be the most opportune moment for the child support agency to get involved. Even when an unwed father acknowledges paternity in the hospital, a child support order is usually not entered until much later. So the child support agency's involvement with the parents may be minimal or non-existent at the time of birth. The key time for the child support agency is most often when the child support order is established and shortly thereafter. This is when the agency has a clear mission and motive to work with the family. It is the "opportune moment" for the child support agency to establish a positive relationship with the parents and will often determine whether child support will be paid voluntarily, or whether an antagonistic relationship will develop between the agency and the noncustodial parent.

This report examines this key aspect of child support enforcement. The premise is that if this "up-front" process is improved, the child support program can strengthen the relationship between the father, mother and child, as well as increase voluntary compliance with child support obligations. This could ultimately increase both financial and emotional support for children.

In order to better understand this up-front process, Policy Studies Inc., with funding from the Annie E. Casey Foundation, initiated a project to learn more about the up-front processes that states are using and to advise them on how to improve their processes. This effort included:

- ✓ An analysis of practices on the use of default orders;
- ✓ An examination of best state practices; and
- ✓ A review and analysis of selected international practices.

This report begins with a review of the importance of child support to single parent families in the post-welfare reform era. Then, two major problems with the child support system are discussed: 1) the low payment rate on current support obligations; and 2) the possibility that the child support system alienates some fathers from their children. This report proposes that these problems stem from how noncustodial fathers, and particularly low-income noncustodial fathers, are treated initially when the child support obligation is established and in the first months thereafter. Then, this report discusses three major areas where state child support programs could improve in working with low-income noncustodial parents to get them started on the right track:



- ✓ Establishing realistic expectations for low-income fathers;
- ✓ Encouraging voluntary compliance with child support obligations; and
- ✓ Responding to the changing circumstances of low-income parents.

Throughout this report, recommendations are offered for practices to improve the system in each of these areas, and the report ends with a summary of recommendations for child support programs, state legislative action, and federal action. This report focuses on opportunities to assist low-income fathers in meeting their responsibilities and making a stronger connection with their children, while also increasing the financial support to children. PSI's analysis concludes that three specific changes to the child support system are of particular importance: 1) reducing the proportion of orders entered by default; 2) setting realistic child support orders at the outset; and 3) making adjustments to orders to reflect changes in circumstances. These changes would make the child support system more fair and equitable to low-income noncustodial fathers, while improving the well-being of children through increased voluntary compliance with current support obligations. While the recommendations are focused on assisting low-income fathers in the child support system, they are not intended to decrease but to increase overall child support payments to custodial parents and their children.

For the most part, the recommendations in this report are not difficult to implement, and do not require changes in state or federal law. Moreover, wholesale changes to the child support system are not necessary. What is required, though, is recognition of the plight of low-income noncustodial fathers, leadership at the state and local level, and a willingness to try a different approach.



THE IMPORTANCE OF CHILD SUPPORT TO SINGLE PARENT FAMILIES

The Impact of Welfare Reform

The welfare reform bill passed in 1996—the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)—included the most comprehensive child support reform measures ever enacted in the United States. These measures affect far more people than just those receiving assistance through the TANF program. Approximately 40 million people—custodial and noncustodial parents and their children—were impacted by the new child support measures. Yet, while the changes to welfare are well known and have been the subject of intense study and debate, far less attention has been given to child support enforcement. This is unfortunate because child support has become even more important for low-income families in the post-welfare reform world.

Welfare reform has transformed the traditional welfare program of the past into a short-term program intended to assist recipients in a transition to work. Welfare recipients are faced with time limits, and states are expected to move welfare recipients quickly into work. Support outside the traditional welfare system has been greatly expanded in order to assist low-income wage earners. These supports include expanded health care for children (Medicaid and the State Children's Health Insurance Program—SCHIP), expanded child care benefits, and a significantly increased Earned Income Tax Credit (EITC). Child support is an important part of this mix of supports. Research suggests that the receipt of child support is important to assist welfare recipients to leave welfare for work, remain off of welfare once they have left, and to reduce poverty.³ A recent Urban Institute study showed that child support represented 26 percent of a family's income (\$1,979 in 1996) for those low-income families who receive child support.⁴ In these families, child support was a more important source of income than cash assistance. For those poor children who receive child support but not welfare, child support represented over one-third of their annual family income (\$2,674 in 1996).

Research also shows that child support enforcement has other positive effects on child outcomes, including educational attainment.⁵ Most recently, child support enforcement has received attention as a means to promote marriage. There is some evidence, although not conclusive, suggesting that child support enforcement may decrease out-of-wedlock births and divorces.⁶

Connecting Fathers and Children

Besides the financial benefit to children, child support is now viewed within the larger lens of the father and child connection. There are widely-recognized benefits of the

involvement of fathers in their children's lives. Involvement of fathers in a healthy parent-child relationship has significant benefits for children, including reduced out-of-wedlock childbearing, high school drop-out rates, substance abuse, and juvenile delinquency. The child support enforcement program is increasingly seen as a potential avenue to strengthen the relationship of fathers and children, particularly for "fragile families." The term "fragile families" describes non-marital family relationships where the noncustodial parent, usually the father, maintains a relationship with the child by living with the mother outside of marriage (cohabitation) or through significant visitation.⁷

Most fathers, even in cases of out-of-wedlock births, have a connection with their child at birth. They indicate that they want to provide for the support of their child, and most are willing to acknowledge paternity. In-hospital paternity establishment programs, required under federal law since 1993, attempt to build upon this connection at birth.⁸ These programs require states to have procedures in place to offer unmarried fathers and mothers the opportunity to acknowledge paternity within birthing hospitals. These programs have been remarkably successful in increasing the number of paternities established.

Researchers and policymakers have termed the birth of the child "the magical moment," and see it as an opportunity to go beyond the acknowledgment of paternity and as a unique opportunity to encourage the involvement of young, unwed fathers in their young children's lives and to increase their ability to support their children. Recent program initiatives, such as the Partners for Fragile Families, are based on this premise.⁹ Such interventions certainly appear to have merit. Yet, the time of birth may not be the most opportune moment for the child support agency to get involved. In-hospital paternity acknowledgments establish paternity, but do not establish a financial obligation for child support (order). Paternity acknowledgments are usually obtained by hospital staff, not child support caseworkers. Establishing child support orders is a legal process that follows, usually much later.¹⁰ The key time for the child support agency is most often when the child support order is initially established and in the months immediately afterwards. This is when the agency has a clear mission and motive to work with the family.



PROBLEMS WITH THE CURRENT CHILD SUPPORT ENFORCEMENT SYSTEM

Despite Improvement, Two Prominent Problems Remain

Child support collections in this country have increased as a result of child support reform efforts. Collections increased from \$8 billion in 1992 to \$18 billion in 2000. Paternity establishments have tripled from 500,000 to 1.5 million during the same period. Despite this progress, two prominent problems still exist with the current child support system. First, collection rates on "current support" continue to be far too low. "Current support" is the amount that is due for the current month, as opposed to arrears (past due support) for previous months. Only approximately 59 percent of current support is paid in the United States.¹¹ As a result, millions of low-income, custodial parents and children do not receive the child support they need to improve their financial security. About 26 percent of custodial parents and their children live below poverty, and about one-fourth of all custodial parents with child support agreements or awards and who are due support receive no child support at all.¹²

The second prominent problem with the child support system is more subtle, but equally of concern. Some researchers and observers contend that the system can actually drive fathers—especially young, low-income, unwed fathers—away from their children. In their view, this happens because fathers are saddled with unrealistic child support orders. Unrealistic orders result from policies such as default orders, retroactive support orders, and income imputation that increase the amount of arrears beyond a father's capacity to pay. Faced with obligations in the thousands of dollars at the outset, poor unwed fathers are sometimes driven further into poverty or into the underground economy and often become resentful of the mother and even more disengaged with their children.

These two problems with the child support system—the low rate of payments of current support and the system's causing fathers to become alienated—are two sides of the same coin. Both problems stem in large part from how the child support system treats fathers "up front" when paternity and a court order are established, and during the first critical months afterwards. When the initial treatment of fathers drives them away from the mothers and their children, and sometimes into the underground economy, these fathers then fail to make current child support payments, leaving mothers and children without the financial support they need. Everyone suffers. If this upfront process can be improved, the system could potentially benefit low-income fathers and increase the financial support for single mothers and their children.

Two Possible Approaches

Sometimes noncustodial parents intentionally refuse to pay child support, and coercive enforcement measures are necessary. If a noncustodial parent has the ability to pay support—but refuses to—most agree that he should be held responsible by whatever means can be brought to bear. However, current child support practices often create an antagonistic relationship with the noncustodial parent from the beginning, rather than encourage the voluntary payment of child support. Consider the following hypothetical, but realistic case:

John and his girlfriend, Mary, have a child born out-of-wedlock. They still see each other often, and John has bought diapers and other items for the child. John has had a sporadic work history. After several months of unemployment, John finds a part-time job as a security guard. Mary receives welfare from the state. One day, a process server unexpectedly serves John with a Summons and Complaint for paternity and child support by leaving a copy under his door. When he looks at the papers, they are long, complicated, and written in legal language he does not fully understand. He does understand that his girlfriend has named him as the father. However, he does not understand the reason this is necessary or that the welfare department has required Mary to name the father. This confusion strains his relationship with Mary and he begins to see her and the child less often. The papers require John to go to the courthouse downtown and pay a \$200 filing fee to contest the case. Since John believes he is the father, and he does not have money for the filing fee or a lawyer, he does not file the necessary legal papers in response to the action. Thirty days later, unbeknownst to John, the court enters a default order for \$400 per month in child support, imputing income for John equal to a full time job, and the court orders retroactive support of \$3,000. Six months go by, and John is unexpectedly summoned to his employer's office. His employer informs him that more than half of his wages will be garnished to pay the child support he owes, which now totals \$5,400. John gets discouraged and angered. He quits his job, quits seeing Mary and his child, and works only occasionally putting up sheetrock for a contractor while getting paid under the table.

In contrast, consider this alternative approach on how the case could be handled:

The child support worker approaches both John and Mary in a non-threatening manner before any legal action is started. The need for child support and the child support process are explained to John in straightforward terms. John is offered employment and training services so that he can better support himself and his child in the future. John and Mary are encouraged to work on their relationship and are referred to local community agencies or churches for parenting classes. If



appropriate to their circumstances, the potential benefits of marriage are also explained to John and Mary. A \$150 child support obligation is ordered based upon child support guidelines that take into account how much he can realistically afford to pay at the present time. If his income rises in the future, John agrees to pay more. No retroactive support is ordered. John is treated as a customer of the child support agency and the child support worker is trained to use a "soft glove" approach as long as payments are made voluntarily. Special child support teams work closely with John in the first few months after the establishment of the order to assist him in meeting his obligations. John continues to pay child support voluntarily even after his job increases to full time and his obligation increases. The relationship between John, Mary, and the child is strengthened.

Attributes of the System that Contribute to the Problems

There are three major attributes of the current child support system that can contribute to driving low-income fathers away and discouraging current support payments:

- ✓ *Child support order amounts may not be realistic given the financial circumstances of low-income fathers.* Child support orders may be set too high when entered because child support guidelines are not sensitive enough to the financial circumstances of low-income fathers. More likely, unrealistic child support orders may result from policies that promote the heavy use of default orders, include excessive retroactive support in initial orders, and impute (assume) income.
- ✓ *The child support system does not promote voluntary compliance with child support obligations.* The child support system often focuses on the collection of arrears (past-due support), rather than promoting voluntary compliance with child support obligations and helping to increase the capacity of fathers to pay support.
- ✓ *The child support system does not respond to changing circumstances of low-income parents.* When child support obligations are set too high initially due to default orders and imputing income—or when the father experiences adverse changes in employment status—the system is very slow to adjust the order amount based upon new income information.

What Are Realistic Expectations for Low-Income Fathers?

All of these attributes raise the central question of what society should expect of fathers, particularly low-income fathers. The child support system is built upon the premise that society should demand responsibility from fathers, but it has struggled to define the parameters of that responsibility. Exactly how much responsibility is realistic to expect from low-income noncustodial fathers? What should be the expectation for their work and earnings? Many low-income noncustodial fathers have poor educations and limited work histories. Should society have the same expectations as it would for better-educated and higher-income fathers? Moreover, many of these fathers have a poor understanding of the legal system, distrust for legal authorities, and little or no access to legal assistance. What should be the expectations for these fathers in dealing with the legal system that establishes child support orders?

Child support agencies have generally focused on collecting support from fathers, and not on increasing the capacity of those fathers to pay support. Yet, many young, unwed fathers have difficulty supporting themselves, much less supporting a child. Mincy and Sorensen estimate that at least 16.2 percent, and possibly as much as 33.2 percent, of young noncustodial fathers do not pay child support and are unable to do so without further impoverishing themselves.¹³ These fathers tend to be young, disproportionately African-American, and have a limited education.¹⁴ Only 43 percent of low-income nonpaying fathers work in the labor market, and one-third has not held a job for more than three years.¹⁵ They face the same types of barriers to employment as mothers who are welfare recipients. There is a growing recognition that these low-income fathers need the same kinds of employment and family services that are made available to mothers making the transition from welfare to work.

Throughout this report we discuss the current expectation built into the system. In many instances, we suggest that these expectations do not appear realistic and therefore tend not to benefit the child support system, the low-income fathers, or the mothers and children.



ESTABLISHING REALISTIC EXPECTATIONS FOR LOW-INCOME FATHERS

A myriad of factors affect how much child support low-income noncustodial parents are required to pay. This section discusses the background and basis for the determination of support amounts, describes the adverse effects of current child support agency processes, and offers recommendations to mitigate these adverse effects.

Considering the "Ability to Pay"

The child support reforms passed in 1996 (PRWORA) provided the U.S. with some of the toughest child support enforcement tools in the world. This Act included new hire reporting procedures, financial institution data matching, license revocation, passport revocation, and work requirement authority, among other measures. These provisions give states the ability to vigorously enforce child support obligations. Most agree it is appropriate to use tough tools to enforce child support obligations if the father has the ability to pay support and fails to do so. In the United States, society expects and demands that fathers support their children. However, the justification for tough enforcement is dependent upon establishing obligations that reflect the obligor's "ability to pay." If tough enforcement measures are directed at obligors who do not have the ability to pay, public support for tough enforcement declines.

If a noncustodial father has a good paying job, most would agree he has the ability to pay support. If a noncustodial father is totally disabled, with no income or assets, most would agree he does not have the ability to pay. Of course, many cases fall somewhere between these examples. If someone is unemployed, does he have the ability to pay? What if the unemployment is voluntary? Should poor fathers who are subsisting below poverty themselves be expected to pay child support?

Ultimately, defining the "ability to pay" is a decision which rests with state legislatures, as federal law requires all states to set standardized child support guidelines for determining the amount of child support orders. All child support guidelines consider the income of the father in determining the child support amount. Problems arise for a low-income father, though, when the obligation amount is not based on his actual income—and, thus, is not based on his ability to pay. This can occur most often when the child support order is set by default. Practices such as imputing income, retroactive support, and minimum orders also contribute to the failure to consider the ability to pay. This critical area of the system needs careful scrutiny and reform in order to justify tough enforcement policies.



Establishing Child Support Orders Based Upon Guidelines

Federal law requires that all states develop and use child support guidelines in establishing the amount of the child support order.¹⁶ Child support guidelines provide a numeric formula to determine the amount of the order. These guidelines must be reviewed by the state every four years.¹⁷ Prior to the 1984 Child Support Amendments, which mandated the development of state child support guidelines, state laws for determining the amount of child support obligations were very general and discretionary, leading to wide variations in the amount of orders for parties in similar circumstances. The use of guidelines has resulted in more consistency—and somewhat higher amounts—in child support orders.

One criticism of current guidelines is that they may not be sensitive enough to the circumstances of low-income noncustodial fathers. According to some experts, some child support guidelines are too regressive, requiring low-income noncustodial parents to pay a larger share of their income toward child support than higher-income noncustodial parents.¹⁸ One reason for this regressivity is that child support guidelines are based on the cost of raising children. These costs do not increase proportionally as income levels rise.

All state guidelines use income as a major factor in determining the amount of the obligation, along with other factors, such as the number of children, medical costs, and child care costs. Some guidelines only consider the noncustodial parent's income, but the majority of state guidelines consider both parents' income. Most state guidelines allow a self-support reserve so that a certain amount of income is set aside for minimal, basic living expenses of the father before the child support obligation is determined. In many states, this self-support reserve is incorporated into the schedule so it is not obvious to guidelines users. The self-support reserve in most states, however, is considerably below the federal poverty level for one person. This is because few states periodically update the self-support reserve, or because they purposely set it below the poverty level. Self-support reserves are also used in other countries, such as Australia and New Zealand.



Alternative Approaches to Low-Income Adjustments

Most recently, certain states (e.g., Colorado and South Dakota) have adopted alternative approaches to low-income adjustments in child support guidelines. These states first ask what the order amount would have to be so the parents would have the same standard of living if both parents earned minimum wage. Each parent's standard of living is calculated by considering the ratio of the parent's after-tax income, net of child support, to the federal poverty guidelines. For the father, this would be his after-tax income minus child support, as a proportion of the federal poverty guidelines for a single person. For the mother, this would be her after-tax income plus child support, as a proportion of the federal poverty guidelines for the mother and the children. This calculation provides the child support guideline amount at minimum wage income. Above this income threshold, there is a shift from poverty-income-determined amounts to guideline-determined amounts that consider how much would have spent on the child had the family remained intact.

Several other provisions in the state guideline can unintentionally undermine the effectiveness of a low-income adjustment in a state guideline. An additional amount for childcare and the child's medical expenses (i.e., the health insurance premium and any medical expenses not covered by health insurance) are added to base support in several states. In other states with a self-support reserve, the father's share of childcare and medical expenses is added to the order amount after the self-support reserve test is applied. If these expenses are substantial, the end result will be a support order that leaves the father with less than a poverty-level income if he pays it. However, other states (e.g., Vermont and West Virginia) apply the self-support reserve test after childcare and medical expenses are added to base support. In these states, the integrity of the self-support reserve test is retained.

Another factor is adjustments for multiple families. A Washington State study analyzing cases with \$500 in arrears and no payment in six months found that 46 percent of noncustodial parents have multiple orders.¹⁹ Many were delinquent in child support just because the maximum amount that could be legally withheld from their paycheck was not sufficient to meet the multiple current support obligations. State child support guidelines differ in how they deal with multiple families, and it is often a controversial issue. Should the child support available for a child decline because the father has remarried or had additional children? A small proportion of states limit the adjustment for additional dependents to cases where the parents had children who were born prior to those who are the subject of the guidelines calculation.

Finally, another common provision in guidelines and procedure is to impute full-time earnings for noncustodial parents who work part-time or have seasonal employment (discussed in greater detail later). Imputing income in these circumstances can make the

noncustodial parent ineligible for the low-income adjustment that would apply if the actual income were used.

A central question for states is whether guidelines should be adjusted to lower the expectations for low-income noncustodial parents. This is a difficult and often hotly debated policy decision because the needs of children, often living below poverty, must be balanced with the ability of noncustodial parents—many of whom are poor themselves—to pay support. In setting guidelines, states are making a political decision that attempts to balance these different interests. There is no single, clear answer to this dilemma, but states reviewing their guidelines need to be sensitive to these issues and understand that it does little good to set child support awards that low-income noncustodial parents cannot pay. This only increases arrearages, creates resentment against the child support system, and puts the child support agency in the unproductive role of trying to collect money where none exists. The old saying “You can’t get blood from a turnip” is often used to describe the futility of such an approach.

Just as importantly, the effect of policies relating to default orders, imputing income, minimum orders, and retroactive support can produce regressive effects. This results in low-income noncustodial parents paying more, proportionally, than higher income noncustodial parents. These issues may be more important to address than guideline amounts if a state wants to ensure that child support orders are based on a true ability to pay. Also, these policies may be easier to change from a political standpoint than changing guidelines, as they do not directly involve tradeoffs between poor noncustodial parents and poor children.

Child Support Guidelines Recommended Practices

- ✓ *States should use state guideline reviews to reexamine the financial expectation of low-income noncustodial parents and ensure that they pay an equitable percentage of their income as compared to higher-income noncustodial parents.*
- ✓ *States should consider adding low-income adjustments to their guidelines—or revising their existing low-income adjustment—to better consider noncustodial parents’ ability to pay. States also should consider how the addition of child care and the child’s medical expenses to the base support amount would affect low-income noncustodial parents, and further depart from their ability to pay.*
- ✓ *States should use guidelines reviews to reassess the adjustments for multiple families, particularly as they apply to low-income noncustodial parents.*



- ✓ *Congress should create a National Guidelines Commission to examine and make recommendations on state guidelines, including: 1) levels and adequacy of support amounts; 2) treatment of multiple families; 3) whether more uniformity in terms and guideline amounts is desirable; 4) imputing income; 4) minimum orders; 5) retroactive support; and 6) child care and medical support interaction.*

Default Orders

Researchers and observers have cited default child support orders and as a contributing factor to the large amounts of child support arrearages accumulated by many low-income obligors.²⁰ Default orders result when the noncustodial parent fails to make a legal appearance in the child support case brought against him. The court or administrative agency then enters a default order, often imputing income to the parent, or sometimes setting a minimum child support order. The default order may exceed what a low-income father can reasonably afford to pay. Since so little is known regarding default order practices, we surveyed and analyzed such practices in a number of jurisdictions around the country.²¹

Default orders are a necessary part of the judicial process, and are appropriately justified when someone knowingly has the ability to respond to a court action and fails to do so. People should not be able to escape their responsibilities by ignoring or evading court actions. However, a myriad of problems can result in unfairly entered default orders, especially for low-income individuals. First, the legal papers are often served by private companies that get paid based on the number of papers they "serve," and not whether the papers actually reach the right person. Most jurisdictions allow "substitute service," where the papers are left with co-workers, relatives, or acquaintances that reside with the father. Process servers are not always careful about who gets the papers under substitute service. They may leave the papers with whoever comes to the door, even if the right person has moved or never lived there at all. There is little monitoring of process servers, so the extent of this problem is unknown.

Default orders also result when the father is properly served but is unable to respond for some reason. Many fathers have language difficulties, may not understand the nature of the papers, or are fearful of getting involved with the justice system. Few low-income fathers can afford to hire an attorney, and few Legal Aid offices handle such cases. Other logistical barriers are frequent. In some jurisdictions, filing fees as high as \$200 are required for the father to file an answer. Also, he may have to travel long distances to appear in person to file an answer at a designated courthouse or building.

When child support orders are established by default, two concerns are raised:

- ✓ The noncustodial parent may be unaware of the obligation or the obligation amount, and therefore may be less likely to make child support payments.
- ✓ Default orders are often based upon presumed or imputed income, rather than actual income information, and therefore may not reflect the true ability of the noncustodial parent to pay child support.

As a result, a potentially unproductive arrearage cycle begins: 1) an order is set by default for a support amount possibly greater than the obligor can afford; 2) retroactive support is tacked on to the initial support obligation, resulting in instant arrears (generally without the obligor's knowledge); 3) the default obligor is less likely to make current payments than an obligor who actively participates in the order process; and 4) the father's failure to make current payments cause arrearages to accrue at a rapid rate.

Default Order Rates

In 2002 Policy Studies Inc. conducted a survey of selected jurisdiction to obtain data on default order rates. As shown in Exhibit 1 below, default order rates varied significantly in the jurisdictions reviewed—from as low as 10 percent in Harris County, Texas, and 13 percent in New York City—to as high as 62 percent in Maricopa County, Arizona, and 79 percent in Los Angeles County.

Exhibit 1
Default Order Rates in Selected Jurisdictions

Jurisdiction	Default Order Rate ²²
Harris County, Texas	10%
New York City, New York	13%
Hennepin County, Minnesota	19%
Connecticut	20%
Alaska	30%
King County, Washington	52%*
Maricopa County, Arizona	62%
Los Angeles County, California	79%

* Administratively established orders only

This illustrates the significant differences in default order rates, apparently attributable to widely differing default practices. The high default order rates, such as in Los Angeles County and Maricopa County, raise serious questions about the legitimacy of many of these orders. A high percentage of these orders are not based upon actual income. Also, high default rates may result in lower collection rates on current support.²³ Exhibit 2 below details the variation in default order practices and the resulting potential effect on default order rates.



Exhibit 2
Default Order Practices

Issue	State Practices	Potential Effect on Default Order Rate
Communication Between Caseworkers and Noncustodial Parents (NCPs)	Some jurisdictions actively promote communication between the caseworker and the NCPs. These jurisdictions believe it is important for NCPs to understand the nature and significance of the child support case. NCPs who telephone or drop-ins are encouraged to file a response or to enter a stipulation. For example, Alaska conducts outreach efforts to encourage parents to contact the agency by telephone or mail with questions or concerns. Conversely, other jurisdictions employ practices that result in almost no communication with NCPs.	Increased communication between caseworkers and NCPs appear to result in more active participation by NCPs in the process of setting the child support award, better income information, and reduced default orders.
Time and Date Certain for Appearance	Some jurisdictions require a written answer. Other jurisdictions give NCPs a time and date certain to make a personal appearance, either for an appointment with a caseworker or for a court hearing.	Many child support professionals believe that giving NCPs a time and date certain to appear decreases the default rate. Many NCPs find it difficult to answer pleadings and easier to make a personal appearance.
Use of Stipulations	Some jurisdictions, such as Connecticut, actively encourage stipulations (agreements). But Hennepin County and New York City, which have relatively low default order rates, do not encourage stipulations; instead, the agency encourages NCPs to show up personally in court if they want to enter an agreement.	It appears that both strategies, encouraging the use of stipulations and encouraging court appearances, may be effective in reducing default order rates. Both approaches result in NCPs' active participation in the process.
Internal Agency Incentives	Some jurisdictions employ internal agency incentives with caseworkers, such as productivity rates (reported in Maricopa County) or a heavy emphasis on compliance with times frames (reported in Los Angeles County).	Jurisdictions that impose productivity rates or heavily emphasize time frames create additional incentives for caseworkers to process and produce orders without NCP participation.
Filing Fees	Of those court processes analyzed, only two jurisdictions imposed NCP filing fees. Los Angeles County had a filing fee of \$191. Maricopa County imposed a filing fee of \$28.	Filing fees charged to NCPs are an impediment to their entering a legal response, resulting in an increased likelihood of default orders.

Additional Notices Prior to Entering Default Orders	Some jurisdictions require additional notice before a default order can be entered. In Maine, a letter is sent to NCPs. In Hennepin County, if the NCP has been served but does not appear in a paternity case, an order to show cause is prepared and a bench warrant is served. Harris County uses either precepts (order to appear) or sends an additional notice by certified mail (citation only cases).	Additional notices seem likely to reduce default orders since NCPs may be more likely to appear and participate in the proceedings.
Default Hearings	Some jurisdictions, including Hennepin County, Connecticut, and Maricopa County, require a default hearing, while other jurisdictions, such as Los Angeles, "rubberstamp" default orders without a hearing, strictly on the basis that the NCP failed to file a written response.	Hearings provide an additional opportunity for NCPs to appear and participate in the proceedings. In some jurisdictions, however, particularly those with crowded court calendars, requiring default hearings could delay the establishment of orders.
Simplified Language	Legal documents, such as a summons and complaint served on the NCP, can be long, complicated, and written in language difficult to understand. Some jurisdictions have taken special measures to have the documents written in less complicated language. For example, Maine employs a sixth grade reading level and Virginia employs a fifth grade reading level. A number of jurisdictions have included very explicit, simple language to get the attention of NCPs named in child support cases. For instance, Connecticut includes, "YOU MUST APPEAR" on the face of the documents. In Hennepin County, the summons and petition package has been simplified under uniform state forms with the addition of an explicit warning about the consequences of the failure to appear.	Child support professionals in the jurisdictions with simplified legal documents and explicit language believe it reduces default orders.



Reducing Default Orders - The Role of Agency Culture

A significant difference between those jurisdictions with high default order rates and those with low rates appears to be due to agency culture. Agencies that actively promote the establishment of orders, regardless of whether the orders are obtained by default, have higher default order rates. Los Angeles County rapidly increased its percentage of cases with orders over the past five years, but perhaps by employing practices that increased default orders.

Jurisdictions that we surveyed that try to avoid default judgments exhibit a culture—from top to bottom—that appears significantly different. For example, child support officials in Alaska, Hennepin County, and New York City expressed a high degree of concern that the right person is served, that default orders are kept to a minimum, and that order amounts are realistic given the actual income of the noncustodial parent. Hennepin County and New York City both reported that the courts in those jurisdictions are reluctant to enter default orders, and their judges carefully scrutinized the cases and the service of process before a default order is entered.

If agency culture does indeed play a significant role in contributing to default order rates, it suggests that child support agencies should take internal steps to change the agency culture, in addition to examining policies imposed by statute or court rules. Careful attention to messages, incentives, and other information communicated to staff may change the agency culture over time. Also, a critical issue for child support agencies is how they define their mission. Is it simply to collect as much money as possible, or is it a broader mission that includes serving the noncustodial parent as well as the custodial parent?

Reducing Default Orders Recommended Practices

Agency Culture

- ✓ *Child support agencies should promote an agency culture centered on obtaining "good orders" that include active involvement of the noncustodial parent and are based on accurate income information.*
- ✓ *Child support agencies should ensure that internal productivity standards do not contribute to high default order rates.*
- ✓ *Child support agencies should track jurisdiction default rates to assess whether there are any problems contributed by poor service of process.*

Communication and Accessibility

- ✓ *Child support agencies should promote communications with noncustodial parents that facilitate a better understanding of the nature and significance of the child support matter.*
- ✓ *Child support agencies should make use of the telephone and drop-ins to obtain more information from noncustodial parents on their location and income. This is also an opportunity to educate noncustodial parents on their responsibilities.*
- ✓ *Child support agencies should re-write documents that are served to make them easily understandable.*
- ✓ *Child support agencies should ensure that documents are available in the language spoken by the noncustodial parent.*
- ✓ *Child support agencies should have interpreters readily accessible.*
- ✓ *Child support agencies should use simple cover forms and "YOU MUST APPEAR" language to emphasize importance of documents.*
- ✓ *Child support agencies should either encourage stipulations or encourage personal appearance before the adjudicatory body setting the obligation.*
- ✓ *Child support agencies should use informal responses as an opportunity to avoid defaults by encouraging stipulations or participation in the proceedings.*
- ✓ *Child support agencies should their offices, and if possible, courthouses, easily accessible.*
- ✓ *States should eliminate respondent filing fees.*

Personal Appearances

- ✓ *Child support agencies should require appearance by giving noncustodial parents a time and date certain to appear for appointments or court hearings.*
- ✓ *Child support agencies should require orders to show cause and bench warrants to compel attendance in paternity cases.*
- ✓ *Child support agencies should require a default hearing prior to entering default orders.*
- ✓ *Child support agencies should use multiple notices to the noncustodial parent prior to entering default orders.*



Federal Performance and Incentive Measures and Default Orders

Federal performance measures and incentives may have some impact on child support agency policies and culture in regard to establishment of orders and resulting default orders.

PRWORA required the Secretary of Health and Human Services, in consultation with directors of state child support enforcement programs, to recommend to Congress a new state incentive funding system based on performance. An Incentive Funding Work Group developed recommendations for a new performance-based incentive funding system. The Group recommended five key performance measures to evaluate each state's performance and to measures results in the child support enforcement program. These measures included paternity establishment, support order establishment, collection of current support, collection of arrearages, and cost effectiveness. Incentives would be paid to the states based on each state's weighted scores on each of these measures. These performance measures were ultimately incorporated in the legislation passed by Congress in 1998: the Child Support Performance and Incentive Act.

A state or jurisdiction that does not perform well in establishing orders may initiate policies and procedures to increase the percentage of cases with orders, even if those procedures result in high default order rates. However, it seems likely that high default order rates lead to lower collection rates on current support obligations, another important incentive measure. Further research on the effects and interactions of program measures is needed.

Service of Process

Service of process practices can affect default order rates. Service of process is the formal delivery of documents initiating a court or administrative action, such as a child support case. Rules on service of process in civil matters—as child support cases are—most often require the documents (usually called a summons and complaint or summons and petition) to be delivered to the person named as the “respondent” or “defendant” in the proceeding. These papers require that the respondent or defendant respond in writing by filing an answer or response with the court.

Methods of Service of Process

Service of process is governed by statutes, state court rules, and sometimes by local court rules. There are frequently similarities in the laws and rules involving the service of process among states since they are based upon model rules. However, there also can be considerable variation on the details. Besides statutes and court rules, local jurisdictions and child support offices may have their own, more restrictive practices.

Many states use rule language which provides for service of process similar to the following: "Service... shall be effected by delivering a copy of the summons and of the pleading to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein..."²⁴ Service of a summons, complaint or petition on the actual person named is broadly referred to as "personal service." Service on someone other than the individual named, such as at the residence "with some person of suitable age and discretion" is termed "substitute service." Substitute service rules vary considerably.²⁵ In addition, certain jurisdictions, particularly those that use administrative processes (e.g., Alaska), allow service by certified mail to establish administrative orders. Maine and Washington allow service by mail for administrative orders but not for paternity cases.

Multiple means of service on the same individual are used in some jurisdictions. For example, Virginia serves by first class mail as well as by the sheriff serving the documents. Other jurisdictions make a distinction between paternity cases and cases only establishing a child support obligation. Maine requires personal service in paternity cases but allows child support orders to be served through certified mail. Hennepin County procedures require personal service in paternity cases, but allow substitute service only in cases establishing child support awards.

Most state rules of civil procedure also provide for service by publication in limited circumstance when the party being served cannot otherwise be located or is avoiding service. Under service by publication, a legal notice is published in a local newspaper advising the person of the legal proceeding brought against him. While some jurisdictions reported they used service by publication with some frequency in the past, none of the jurisdictions examined currently uses it other than in very rare instances.

Many child support professionals have come to the conclusion that personal service, rather than substitute service or service by publication, is more likely to result in actual service to the right person, resulting in lower default order rates.

The jurisdictions surveyed used a variety of types of process servers to deliver the documents—state troopers (Alaska), private process servers (Alaska, Maricopa County, and Adams County), Sheriff's Office (Virginia), and state staff (Connecticut). Many jurisdictions used more than one method. For instance, they may use law enforcement as



a first resort and private process servers for more difficult cases. Maine uses all three—Child Support Enforcement staff, the Sheriff's Department, and private process servers. Hennepin County uses both the Sheriff and private process servers.

Payment methods for service of process also varied among jurisdictions. Some jurisdictions pay for service by the number of attempts required, others pay for only successful service, and some pay additional fees based upon mileage. It is possible that payment methods influence the quality of service. While there are no hard data to confirm this, private process servers paid on "successful service" may have an incentive to use substitute service, and may not use due care as to who receives the actual documents.

Service of process rates varied little among jurisdictions that were able to provide this information. Alaska reported a 70 percent success rate, Maricopa County reported 65 percent, and New York City reported 65 percent. Adams County, Colorado, reported a success rate of 89 percent and 54 percent for one month which was tracked depending on which of two private process servers was used. One Colorado study comparing an in-house process server with a private contractor found "there was little difference in the success rate achieved by the private vendor and the in-house process server. During the study period, 56 percent of the documents issued to the contract workers were successfully served while the in-house technician achieved a 53 percent rate of success."²⁶

The rate of successful service will impact the number of cases that remain in locate status without a child support order. As a consequence, a number of jurisdictions have taken special measures to improve the locate information given to process servers to increase the rate of successful service. In Alaska, individual caseworkers communicate directly with process servers. Alaska also recently contracted with a private company to provide additional location information in difficult cases. In Harris County, child support locate troubleshooters co-locate with constables performing the service. In Maricopa County, an Office of Special Investigations conducts intensive locate research using many state information databases, including law enforcement databases. In Maine and Virginia, caseworkers telephone noncustodial parents directly to get current locate information if they cannot otherwise be served.

Service of Process Recommended Practices

- ✓ For paternity cases, child support agencies should require personal service and not substitute service.
- ✓ Child support agencies should use multiple means of service, such as service by first-class mail in addition to personal service.
- ✓ Child support agencies should carefully monitor the actions of process servers to ensure proper service of process.
- ✓ Child support agencies should use the telephone to call custodial parents, noncustodial parents and employers for locate information prior to making service attempts.
- ✓ Child support agencies should use all automated locate sources available.
- ✓ Child support agencies should encourage direct communication between caseworkers and process servers.
- ✓ Child support agencies should use special staff or private contractors to provide additional locate information in difficult cases.

Imputing Income

Most states impute income when the noncustodial parent is unemployed or income is unknown. Income is deemed unknown if the noncustodial parent fails to appear in court and is held in default, and the court or tribunal has no information on which to base the order. The rationale for imputing income when income is unknown is that the court or administrative unit setting support must use some method of income determination, otherwise the noncustodial parent would benefit from his or her failure to provide information or appear at the hearing. The rationale for imputing income when the noncustodial parent is unemployed is based on the assumption that noncustodial parents can and should find employment in order to support their children. In addition, in some cases, the noncustodial parent may claim he is unemployed, but he actually has income from work in the underground economy or from some other undisclosed source. (Recent research suggests that a significant share of unmarried fathers—three in ten—participate in some underground work activity.²⁷) Imputing income ensures that noncustodial parents do not escape their obligations because their income is hidden.

An Office of Inspector General (OIG) study found that most of the sampled states (nine of ten) imputed income if no income information was available, and half of the sampled states imputed if the noncustodial parent was unemployed.²⁸ Most sampled states also imputed income if the parent was deemed underemployed. The OIG report further found that income was imputed in 45 percent of the cases it analyzed. In 37 percent of imputed income cases studied by the OIG, the noncustodial parent was unemployed or



underemployed. In 46 percent of imputed income cases, the noncustodial parent failed to appear at the case conference or court hearing, or he failed to provide income information. In their absence, default orders were set using imputed income. The OIG report also found that child support was less likely to be paid in cases where income was imputed (although a causal relationship could not be assumed).

Imputing income is often used when setting child support award amounts for low-income noncustodial parents because they frequently fail to appear or provide adequate documentation of income. Like minimum and retroactive orders, imputing income often results in excessive arrearages that the noncustodial parent often cannot pay.

The court setting the child support award commonly imputes income based on the assumption that the noncustodial parent is earning the equivalent of a full time job at minimum wage. The OIG reported that 35 states based imputed income "on the premise that the noncustodial parent should be able to work a minimum wage job for 40 hours per week."²⁹ Other states assume income at some other standard, such as the standard of need for the family. For example, in the absence of other income information, California law provides that income is presumed to be an amount equal to the Minimum Basic Standard of Adequate Care (MBSAC) for the supported child. In 2002 the presumed income for an obligor with one child to be supported was \$2,145 per month under the MBSAC. The related child support order for that income level was \$423 per month.

Iowa's IV-D Median Wage Approach

Based upon a legislatively-mandated study, the child support agency in Iowa determined that the state median household income level, which was used when income was imputed, was too high to be representative of the income of noncustodial parents involved in the child support program. The child support caseload typically had lower incomes than the state as a whole. Therefore, basing orders on the median household income resulted in significantly higher order amounts than orders based on actual income. The median household, income-based orders also had a lower payment rate (8 percent), compared to those based on actual earning information (52 percent). In response, the state agency created the Child Support Recovery Unit (CSRU) Median Wage Rate based upon the median wage of the child support population. This resulted in significantly lower order amounts when imputing income for low-income noncustodial parents.

There are a number of alternatives to imputing income which vary depending upon the reason income has been imputed. If the noncustodial parent is unemployed, and as a result, the state imputes income at the level of a minimum wage job, imputing income is essentially setting a minimum order. In this situation, states could impute income only in cases where the noncustodial parent has the genuine ability to pay support (i.e., impute if

voluntarily unemployed and do not impute if involuntarily laid-off). States could also consider reducing the level at which they impute income. The California standard, for example, seems excessively high when applied to low-income obligors. (See Iowa's alternative approach described in the box above.)

As an alternative to imputing income when income information is unknown, states could reserve the order or set zero orders until a future date when actual income information is obtained.

States can also make better use of automated data sources to obtain actual income information. This would reduce the number of cases where income is imputed. Automated data sources include the State Employment Security Agency (SESA), state new hire reporting, state personal income tax returns, the Expanded Federal Parent Locator Service (FPLS), department of corrections records, and the state TANF system.

Imputing Income Recommended Practices

- ✓ *Child support agencies should limit imputing income—both as to the amount and the circumstances under which it will impute income (i.e., voluntary unemployment or voluntary underemployment).*
- ✓ *Child support agencies should limit imputing income by reserving orders or setting zero orders in cases where no income information is obtained and review the case after 30, 60, or 90 days.*
- ✓ *Child support agencies should expand the use of automated location sources for income information.*

Minimum Orders

Many states also set minimum child support orders. Minimum orders set obligations at some minimum dollar amount, whether or not the father is employed or has income. Typically, minimum monthly orders are set at \$50 to \$100.³⁰

States establish minimum orders under the expectation that all parents, regardless of income, should make some financial contribution to their child. Many policymakers feel that all noncustodial parents have a moral obligation to support their children. Additionally, many policymakers believe that all noncustodial parents can find some work in the economy if they really want to, and thus have the ability to contribute financial support. However, researchers and policymakers have recently questioned whether this policy makes sense in the long-term. Establishing minimum orders may lead to the build-up of excessive arrearages that noncustodial parents cannot pay, particularly



if they are unemployed or underemployed. Not unexpectedly, a recent OIG study found that minimum orders exhibited a lower payment rate than non-minimum orders.³¹

Minimum orders are also often used for incarcerated noncustodial parents under the theory that incarceration is the consequence of the noncustodial parent's behavior, and hence a form of voluntary unemployment. However, this policy may do nothing to benefit children, and may make it more difficult for ex-offenders to meet their child support obligations when they are released.

For many policy makers, minimum orders in the range of \$50 or \$100 per month do not seem unrealistic, and even small amounts of child support can make an important difference for children. However, states could be more selective about when they impose minimum orders. For instance, states could impose minimum orders when the father can financially support the child (i.e., fully capable of work) and not impose minimum orders when the father cannot provide support (i.e., incarcerated or disabled). Both Australia and New Zealand have minimum orders (limited to \$260 per year in Australia and \$663 per year in New Zealand), but are much more selective about the circumstances in which they are imposed.

States should also ensure they comply with the federal law requiring that the use of minimum orders be rebuttable when their application would be unjust or inappropriate in a particular case.³²

Finally, minimum orders could be tied to amounts that actually benefit the child, rather than the state. For example, if the state employs a pass-through of child support payments to the mother—and then disregards that child support income when determining her eligibility for certain benefits—it may be appropriate to limit minimum order amounts to no more than the amount allowed to be passed through and disregarded to the family under state welfare rules. This would ensure that minimum orders benefit the children for whom the support is intended. (See the discussion on pass-through and disregard in the next section.)

***Minimum Orders
Recommended Practices***

- ✓ *States should limit minimum orders to cases where the noncustodial parent has the realistic capability of making a current financial contribution.*
- ✓ *States should consider limiting the amount of minimum orders to no more than the amount passed-through and disregarded for welfare purposes.*

Retroactive or Back Support

Most states set retroactive or back support when setting the initial child support order, requiring payment of child support from the child's date of birth or some other defined period (i.e., from the date of filing of the legal action, or a specific number of years). Fees and costs can also be included in the initial order. These fees and costs may include Medicaid child birth costs, paternity testing costs, attorney's services, court fees, and ongoing case processing fees. According to a recent OIG survey of state practices, 46 states charge retroactive support, assess debt, or do both.³³ The amounts assessed can be in the thousands of dollars. Medicaid birthing costs, in particular, can be as high as \$2,000 to \$4,000.

Imposing retroactive support and fees causes the noncustodial parent to start off with arrears. Critics contend this is a nonproductive policy as it contributes to the build-up of excessive arrears that the noncustodial parent may never be able to pay. On the other hand, defenders argue that a father's responsibility for the child begins at birth, and that retroactive support prevents noncustodial parents from benefiting from child support evasion. States have also required the payment of retroactive support as a way to maximize reimbursement for public assistance costs.

The subject of retroactive support and fees is an area where balance is needed in public policy. First, states should generally limit the time period of retroactivity. It makes little sense to go back several years prior to the date of filing as some states do. Moreover, there are a number of additional options for policymakers. One possibility is that states could adopt policies that limit retroactive support to the date of filing except where the father has attempted to evade legal authorities. For instance, the judge or tribunal could have discretionary authority to set retroactive support only when someone has attempted to evade service of process. States could also cap the total amount of "add-ons" (retroactive support, fees and costs) for low-income obligors.

Retroactive Support Recommended Practices

- ✓ *States should limit retroactive support by limiting the time period of retroactivity or restricting retroactive support only to cases when the noncustodial parent has attempted to evade legal authorities.*
- ✓ *Child support agencies should reduce, eliminate or cap front-end fees and add-on costs charged to low-income noncustodial parents.*
- ✓ *Congress should amend the Social Security Act to preclude State IV-D agencies from attempting to recover Medicaid birthing costs.*



PROMOTING VOLUNTARY COMPLIANCE

Millions of noncustodial parents voluntarily comply with their child support obligations and pay support in full without any coercive enforcement action. More noncustodial parents would voluntarily comply with their support obligations if child support programs focused on promoting voluntary compliance.³⁴ Unfortunately, programs often allow arrears to build up before taking action and then the father's first contact with the child support agency is a negative one as their bank account is frozen or their driver's license is suspended. This creates an antagonistic relationship from the outset. This is particularly true for low-income noncustodial parents who are not likely to be well informed about child support system procedures.

Other public policies also discourage voluntary compliance by low-income noncustodial parents. With pass-through and disregard rules, noncustodial parents often see their child support payments going to the state, rather than to the child. This may discourage payment or encourage payment through informal means.

Additionally, child support agencies focus on child support collection rather than increasing the capacity of noncustodial parents, particularly low-income fathers, to pay support. Yet, many young unwed fathers have difficulty supporting themselves, let alone supporting a child. Many advocates and policymakers believe that these low-income fathers need a broad range of employment and family services. While child support agencies cannot provide all the necessary services directly, they can act as a partner and source of referrals for these services.

Federal and state legislatures and child support agencies should rethink their approach to child support enforcement with greater promotion of voluntary compliance. Promoting voluntary compliance would increase the payment rate for current support obligations, thus benefiting poor mothers and children. Voluntary compliance would also reduce antagonism in the relationship between parents and the child support agency.

Passing-Through Child Support to Families on Welfare

Current welfare rules require that when someone goes on welfare (TANF), they assign their right to child support payments to the state and cooperate with child support enforcement efforts. This is to help reimburse the state for the assistance provided to the family. Therefore, instead of benefiting the custodial parent and children, child support payments are paid to the state. Some states "pass-through" some part of the child support (usually \$50) to the welfare recipient and "disregard" it for purposes of determining the level of benefit payment. Prior to the 1996 welfare reform law, a \$50 pass-through was required, and the federal government shared in the cost. However, the

1996 welfare reform law gave states much more flexibility and eliminated the \$50 pass-through requirement. A minority of states have chosen to keep a pass-through and disregard, but states that do so must now bear the entire cost.

As a result of this assignment requirement, child support paid by low-income noncustodial parents often does not benefit their children. It is easy to understand that this approach does not encourage voluntary compliance with child support obligations. Poor noncustodial parents want to know that the support payments they are making are actually benefiting their children. When child support payments do not reach the children for whom they are intended, this may encourage payments informally—either under the table or through non-cash contributions. This practice is problematic because it could constitute welfare fraud for the custodial parents. Also, arrears continue to build up for the noncustodial parents, as no credit is given for informal payments.

States should consider passing-through and disregarding more of the child support to custodial parents on welfare. This would encourage voluntary compliance with child support obligations, and benefit families who actually receive the child support. Under a welfare waiver, the State of Wisconsin passes-through and disregards all child support to families on welfare. A recent evaluation of this approach offered encouraging findings. Families receiving the full pass-through and disregard were more likely to establish paternity, pay child support, and pay support in higher amounts.³⁵

Some policymakers have expressed concern that pass-through and disregard of child support to custodial parents on welfare could encourage welfare dependency since it could act as a disincentive to leave welfare for work. However, the fact that welfare is now time limited for most recipients should significantly mitigate this concern.

PRWORA also requires that families who leave welfare are first in line to receive past-due child support (ahead of amounts assigned to the state as a condition to receive welfare). However, this “family first” distribution requirement has one major exception: money collected from the tax refund offset program continues to be distributed first to the state. Congress should consider repealing this exception in order to increase support to families who have left welfare, and to encourage payments by noncustodial parents. (While some states may object to the loss of revenue, this change would promote the overall goals of PRWORA.)

Some commentators also have urged the creation of economic incentives to encourage low-income fathers to pay support.³⁶ This approach would include providing matching payments or subsidies to children when child support payments are made on their behalf by low-income noncustodial parents—along with disregards of child support collections for mothers on welfare. Other proposals include using the Earned Income Tax Credit (EITC) to supplement the income of noncustodial parents who pay child support. Such approaches may be complicated to administer, but if successfully implemented, may



provide additional incentives to for parents to pay child support, resulting in increased voluntary compliance. These approaches are worthy of testing and evaluating to determine if they increase child support payments by low-income fathers.

***Pass-Through
Recommended Practices***

- ✓ *Congress should change the child support funding system to provide incentives for states to pass-through and disregard child support to families on welfare.*
- ✓ *States should increase the amount of pass-through and disregard that welfare families can receive.*
- ✓ *Congress should repeal the tax refund offset exception to "family first" distribution.*
- ✓ *States should experiment with economic incentives to encourage payment of child support.*

Improving Customer Service and Information Efforts

Improving customer service and information efforts targeted at low-income noncustodial parents are other strategies to increase voluntary compliance. Improved customer service may lead to increased information sharing, improved relationships with the agency, and increased trust. The task of improving customer service in child support agencies requires a broad-based approach, including:

- ✓ A commitment from the state and local child support agency;
- ✓ Making customer service a priority in the mission and vision of the program;
- ✓ Developing an organizational structure that is customer service focused;
- ✓ Establishing policies and procedures that support customer service; and
- ✓ Continually monitoring customer service satisfaction.

Informational efforts are equally important. If noncustodial parents understand how the child support program works and the importance of child support to their child, they may be more likely to meet their child support obligations. Many low-income noncustodial parents have minimal education and literacy levels, or may not be proficient in English. Additional efforts to educate low-income noncustodial parents, particularly at the outset of the case, may reap substantial benefits in the long term.

Australia and New Zealand both make customer service a high priority within their agencies. Each carefully tracks "client satisfaction" of both custodial and noncustodial parents, identifies barriers to compliance, and makes constant efforts to improve the relations.

Customer Relations Highlights in Australia and New Zealand

Australia

- ✓ Caseworkers conduct up-front telephone interview with both parents.
- ✓ Information kits are sent to both parents at the outset.
- ✓ If client says they won't pay, caseworkers are instructed to determine why.
- ✓ Caseworkers can offer mediation and make referrals to community services.
- ✓ Telephone communication is preferred and considered more personal than letters.
- ✓ Caseworkers make courtesy calls 10 days prior to the due date of the first payment.
- ✓ Child Support Client's Charter provides, "Our role is to help separated parents meet their child support responsibilities."
- ✓ Caseworkers receive "relationship training" to better understand and deal with the client's emotional feelings.
- ✓ At first point of contact the aim is to, 1) ensure parents fully understand the child support scheme and their respective responsibilities within the scheme; and 2) improve collection by supporting parents to sustain child support arrangements with appropriate advice, information and products, and/or referral to external service providers.

New Zealand

- ✓ Child support program utilizes community liaison officers.
- ✓ Child support caseworkers are encouraged to use a "soft glove" approach in dealing with clients at the beginning of a case.
- ✓ "Sales teams" are used to establish a relationship with customers who are new to Child Support. Sales staffs focus on ensuring that customers understand the child support process, how child support is calculated, and the importance of paying their child support (voluntary compliance).
- ✓ If the liable parent misses a payment, the Sales team contacts the customer to re-educate them on the importance of voluntary compliance.

***Customer Relations and Information Efforts
Recommended Practices***

- ✓ *Child support agencies should make customer service a high priority and they should develop an organizational structure and policies and procedures supportive of this mission.*
- ✓ *Child support agencies should ensure that staff are trained and encouraged to treat low-income noncustodial parents in a customer-friendly manner.*
- ✓ *Child support agencies should make special educational and informational efforts to encourage voluntary compliance with child support obligations.*

Early Intervention

In the history of a child support case, the most important payments are the very first ones paid after an order is entered. Many child support administrators now believe that if those initial payments are made, there is a much greater likelihood that regular payments will be made in the future. In addition, if the noncustodial parents can make the payments from the outset, they can avoid the build-up of arrearages. Early intervention is the practice of monitoring payments from the outset of the order, and taking steps immediately if a payment is missed. This includes contacting the obligor, determining the reason for non-payment, and taking the appropriate steps to collect.

The child support systems in Australia and New Zealand focus heavily on compliance in the first few months after the order is entered. As discussed below (see box), cases are handled by special teams at the beginning (the first nine months in Australia, and the first ninety days in New Zealand). Australian caseworkers are instructed that if the first payment is missed, "it is vitally important that contact is made with these payers as soon as possible after the due date." Caseworkers are instructed to make telephone calls within ten days after a payment is missed, and to approach the client "sensitively and establish the reason for non-payment."

The child support system in the United States is far too focused on collection of arrearages (past due) support, rather than on early intervention efforts that would increase voluntary compliance with current support obligations. In many jurisdictions in the U.S., there is no routine caseworker contact with the noncustodial parent after the order is entered. If no payment is made, arrearages simply build up until automated enforcement action commences—up to six months later in some jurisdictions. Then, the noncustodial parent is faced with attachments of bank accounts, license revocations, liens, and other enforcement actions. If states monitored payments and encouraged voluntary compliance from the beginning, such enforcement actions may never be necessary.

Early intervention efforts should include automated system ticklers to notify caseworkers when payments are missed, caseworker telephone contact with noncustodial parents, and segregation of cases that need early attention from other enforcement cases.

***Early Intervention
Recommended Practices***

- ✓ *Child support agencies should design procedures to monitor cases from the time the first payment is due and take early intervention action as soon as payments are missed.*
- ✓ *Child support agencies should use automatic ticklers to notify caseworkers when payments are missed.*

Case Sorting and Case Management

The ability to do mass case processing—the handling of cases in volume using technology—was one of the major goals of PRWORA.³⁷ This was a necessary and important direction in child support enforcement in order to handle the sheer number of cases. For child support caseworkers, caseloads for of 500 - 1000 cases were, and continue to be, a reality of the program. Automated processes are necessary to handle this volume. However, a key concept of PRWORA reforms was that mass case processing is intended for routine cases. It does not mean that case management capabilities need to be lost for hard-to-serve families. Non-routine cases, including dealing with low-income fathers, can be handled outside the normal mass-case processing procedures.

Case sorting is the separation and treatment of cases based on selected criteria. It allows child support agencies to target enforcement techniques and services more effectively toward different types of noncustodial parents. Few states currently perform case sorting to any significant extent, but the issue is receiving more attention. Some foreign countries, such as Australia and New Zealand, use this strategy successfully. For instance, cases could be sorted so new support orders receive special services or monitoring.



Case Sorting and Case Management in Australia and New Zealand

Australia and New Zealand have been extremely successful in applying case sorting procedures, employing special teams to deal with their child support caseloads, and encouraging voluntary compliance (Australia's collection rate is 86 percent; New Zealand's is 88 percent).

Australia

Australia's Child Support Agency (CSA) is divided into 3 client streams, each with a particular role "in meeting client needs." The three client streams are: new clients, collections support, and debt management services.

- **New Clients Stream** – helps newly-separated parents organize their child support arrangements. Caseworkers conduct pre-registration interviews to explain the program and explain the different products and services available, such as mediation, community support groups, and legal services. A new client staff member is assigned to manage the case for the first nine months.
- **Collections Support Stream** – provides support if an order is more than nine months old. Caseworker tasks in this stream include updating client details, care arrangements and income details; garnishing wages; and attending to client inquiries. The collections support stream also includes a change of assessment team (review and adjustment).
- **Debt Management Services Stream** – manages child support cases with a debt over \$5,000. Caseworker tasks in this stream include negotiating payment arrangements, intercepting tax returns, initiating litigation proceedings, and seizing assets.

New Zealand

In New Zealand, a Customer Relations Management (CRM) Model separates customer services into three groups:

- **Sales** – establishes an initial relationship with customers who are new to child support, and maintain this relationship for 90 days. During the Sales stage, customers are educated about their rights and obligations in an effort to encourage voluntary compliance; payments are established; and customers are identified as voluntary compliers or potential non-compliers. If the liable parent is a voluntary complier and makes timely payments in full, they are transferred to the Services team after 90 days. Non-compliers are transferred to the Special Customer Services and Collections team.
- **Services** – maintains the ongoing relationship for customers, including general inquiries, changes of circumstances and review of payments.
- **Special Customer Services and Collections** – provides specialist services to specific customers to assist with administrative review and enforce compliance.

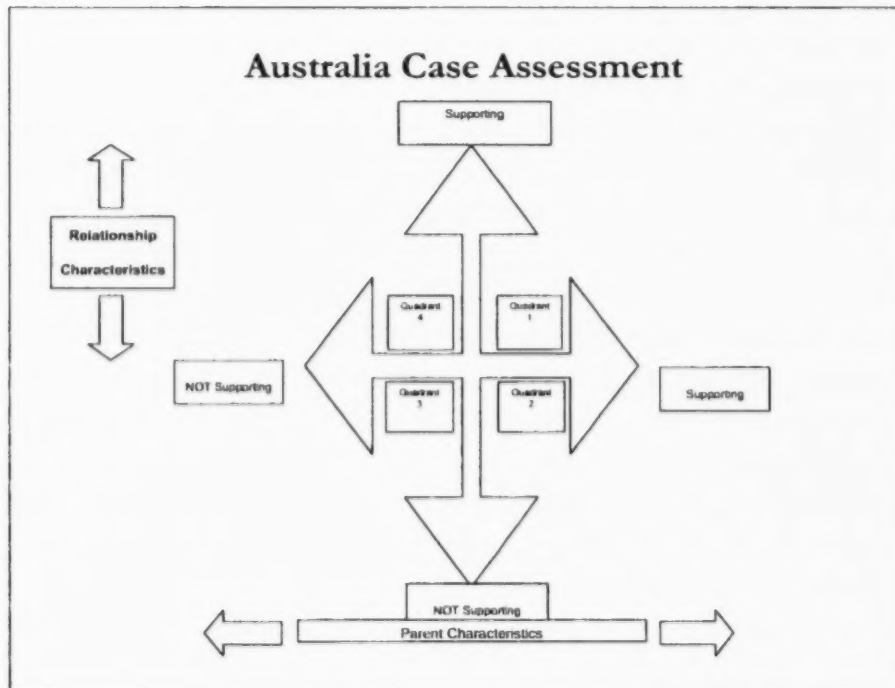
Another related strategy is to develop caseload stratifications and collection strategies consistent with noncustodial parent typologies. For example, Australia assesses relationship and parent compliance characteristics for each case, and then uses this assessment to determine if the case needs individualized case management services. First, caseworkers look at the following indicators to determine whether the case characteristics are supportive of compliance:

Exhibit 3
Australia Case Assessment, Step 1

Relationship Indicators	Compliance (Parent Indicators)
What is the extent of contact with the children?	Does payor earn a salary or wage?
Have the parents cooperated?	Has he filed and is current on taxes?
Have parents been married?	What is his income level?
Have parents lived together?	What is his consistency of employment?
What is the length of the relationship?	What are the current contact details?
What is the age of the youngest child?	If previous cases, is he current?

Based on this assessment, caseworkers place each case on one of four quadrants as shown below:

Exhibit 4
Australia Case Assessment, Step 2





The quadrants then determine the types of services that may need to be provided in the case:

Exhibit 5
Australia Case Assessment, Step 3

Quadrant	Type of Management	Types of Services
Quadrant 1	Issue management	Monitor payments only
Quadrant 2	Case management	Make external referrals, monitor payments, encourage compliance
Quadrant 3	Case management	Early enforcement, internal and external referral
Quadrant 4	Case management	Monitor payments, early enforcement, referral to financial support providers

Caseworkers have a community service directory quickly accessible on their computers which lists potential service providers appropriate for a particular case. For example, if a case is in Quadrant 3 and the parents have relationship problems, they may be referred to counseling, mediation or parenting classes with service providers in the area where the parents live.

Providing intensive case management services to selected groups of cases is a potential strategy that could be implemented in the U.S., particularly for low-income noncustodial parents. Referral to special programs for low-income fathers can be part of the case management effort, including referrals to employment and training programs, public health programs, responsible fatherhood programs, domestic violence programs, and marriage and relationship skills training.

Some states are just beginning to try these case management approaches. For example, in March 2000, the State of Virginia Division of Child Support Enforcement conducted a pilot in the Fredericksburg District Office using a case management model that focused on court-ordered noncustodial parent referrals.³⁸ The goal of the pilot was to increase the regularity of payments by noncustodial parents with a history of irregular payments or non-payment. The parents in the pilot received an assessment and case management services. Parents participating in the pilot increased payment rates significantly.

***Case Sorting and Case Management
Recommended Practices***

- ✓ *Child support agencies should consider case sorting as a means to provide client services tailored to the status of the case.*
- ✓ *Child support agencies should provide more intensive case management services to low-income fathers.*

Special Programs for Low-Income Fathers

While child support agencies cannot provide all the services low-income fathers need to improve their ability to provide financial and emotional support for their children, opportunities exist for agencies to act as a partner and source of referrals for services. States, localities, and community-based organizations across the country have begun to increase the number of programs targeting low-income fathers. These include programs offering a broad array of services—employment services, job training, substance abuse treatment, mediation and family counseling, and parenting education. Child support agencies in some states are beginning to partner with community-based organizations, job service groups, and other faith-based and non-profit agencies. Community-based organizations, in particular, can engender a higher level of trust with noncustodial parents than government agencies.

One obstacle to involvement in programs such as job training and educational programs is that arrears may continue to accumulate while the father is participating. Some programs will work with the child support system to suspend payments as long as the father participates in responsible fatherhood programs, training or educational activities.

States have a multitude of financial resources available to fund programs for low-income fathers.³⁹ These include using the TANF block grant and state maintenance of effort (MOE) dollars. TANF and MOE dollars can be used for a wide variety of programs for low-income fathers as long as the programs meet the broad purposes of TANF legislation. Potential services include: employment assistance; job placement; job training; substance abuse treatment; mentoring; counseling; abstinence and pregnancy prevention; mediation; and transportation and child care. States can also use Welfare-to-Work and other Department of Labor grants, Access and Visitation grants, and Social Services block grants to fund noncustodial father services.

Despite this array of funding sources, efforts to provide such resources to fathers often compete with other program priorities for low-income families. As a consequence, many commentators have called for additional federal and state funding (such as a block grant) so that the same range of employment and family services available to poor mothers can be offered to poor fathers.⁴⁰

One difficulty states have is the uncertainty regarding what types of programs to fund. As yet, there is not conclusive evidence as to what mix of employment and family services would successfully increase the incomes of low-income fathers. Although many local, community-based programs report success, few have been systematically evaluated. The Parents' Fair Share demonstration and other programs specifically directed at increasing employment and earnings of young men, have illuminated the formidable challenge faced by poor men struggling in a low-wage labor market. Nonetheless, there is hope that the right mix of services can make a difference. Additional funding,



demonstrations, and evaluations of this effort are worthwhile, given the potential benefit to children. In addition, this effort could also include programs directed at promoting healthy marriages, including education and dissemination of information on the importance of marriage, developing marriage preparation courses, and assisting fatherhood and youth development programs in focusing on marriage.

Lessons From Parents' Fair Share

Parents' Fair Share (PFS) was a comprehensive demonstration project (with Casey Foundation support) targeted at low-income fathers in the child support system with the goals of increasing their ability to obtain well-paying jobs, increasing child support payments, and increasing their involvement in parenting. PFS had some positive results, but was not as successful as it was hoped to be. The PFS program produced no increase in employment and earnings; nor did it, on average, lead to any increase in the amount of contact fathers had with their children. One potentially promising result, however, was small positive increases in child support payments.

PFS was rigorously evaluated by the Manpower Demonstration Research Corporation (MDRC). A number of lessons learned can be applied in designing other approaches.⁴¹ The final MDRC report on PFS concluded that the child support enforcement agency can play a valuable role in serving as a partner and source of referrals for fatherhood program: "First, the agency can influence recruitment and participation in the program... Second, it is important to have the child support agency strongly involved, so that staff can track fathers' participation and employment, modify support orders, and enforce payment... Third, the child support agency's involvement as a partner might facilitate the shift toward a focus that is more responsive to father's circumstances."

***Special Programs for Low-Income Fathers
Recommended Practices***

- ✓ *Child support agencies should regularly offer referrals to programs for employment services, job training, substance abuse treatment, mediation and family counseling, and parenting education.*
- ✓ *Child support agencies should develop relationships with community-based organizations in order to provide referrals for services to fathers.*
- ✓ *Child support agencies should consider suspending payments while fathers are participating in responsible fatherhood programs, training or educational activities.*
- ✓ *Congress should fund demonstration programs providing services to noncustodial parents with the goal of increasing financial and emotional support to children.*
- ✓ *States should use available federal and state funds for demonstration programs to provide services to noncustodial parents with the goal of increasing financial and emotional support to children.*



RESPONDING TO THE CHANGING CIRCUMSTANCES OF LOW-INCOME PARENTS

The child support system should be flexible enough to respond to the changing circumstances of low-income parents. As discussed above, child support orders should be based upon the ability of the low-income noncustodial parent to pay support. There are two situations when this is especially important to low-income noncustodial parents:

- ✓ Child support orders for low-income obligors are often established through default processes without the father's participation and involvement. Default orders are often based on imputed income. Subsequently, the agency may receive actual income information or the father may appear in response to an enforcement action. At that point, the system should be responsive and allow for remedial measures, permitting the order to be changed to reflect the father's ability to pay child support.
- ✓ Low-income noncustodial parents are usually employed in the low-wage labor market, which is more volatile and where jobs are often temporary. Thus, even if a low-income noncustodial parent has a job today, he could be laid off tomorrow. The child support system needs to be flexible enough to deal with these changes.

When child support orders do not reflect the current ability of the noncustodial parent to pay support, this contributes to the build-up of excessive arrearages. In turn, this creates resentment against the child support system, discourages voluntary compliance, and possibly drives noncustodial parents into the underground economy.

Remedial Measures for Orders

A major concern expressed by researchers and observers is that high-default order rates contribute to the accumulation of excessive arrears. However, default orders are less likely to lead to excessive arrears if the jurisdiction provides a remedial measure to readily change the order when the noncustodial parent appears or provides new income information. Such subsequent appearances are a common occurrence. After a default order is entered, enforcement action usually commences (such as a wage garnishment or license revocation). This often prompts the noncustodial parent to request the adjudicatory body to reduce the child support obligation amount.

Jurisdictions surveyed varied in their approaches to such remedial measures. In Maricopa County, for instance, relief is only obtained by bringing a motion to modify the original order. This is a legal action that can be complicated, and it requires a motion before the court. In other jurisdictions, such as New York City, noncustodial parents are given 30 days from entry of the order to object, and the order can be changed. In Alaska, the administrative order can be set aside if new income information is provided by the

noncustodial parent, or he can appeal through the administrative process. An obligor whose order is set by default is sent a package and encouraged to apply for relief from the original order if it was set too high. Default orders in Connecticut are considered provisional for four months. If the noncustodial parent can show that the order amount is too high based on actual income information, the order can be vacated. In King County, there are two remedial measures available for noncustodial parents: 1) in paternity cases which use a judicial process, a Conference Board can write-off or compromise arrearages; 2) in administrative cases (establishing child support orders when paternity is not an issue), the order can be administratively changed within a one-year period.

Highly administrative programs, as opposed to highly judicial programs, may have some attributes contributing to increased default order rates, such as service by mail (rather than personal service) and a lack of court hearings. However, a mitigating factor in administrative systems may be the ease of obtaining remedial relief to adjust the order so excessive arrears do not accumulate.

***Remedial Measures for Orders
Recommended Practices***

- ✓ *Child support agencies should consider making default orders provisional or temporary to permit changes if the noncustodial parent appears and provides actual income information.*
- ✓ *Alternatively, child support agencies should consider allowing vacating or default orders, extending the time limit for modification of default orders, or expungement of arrears.*

Review and Adjustment

Review and adjustment (also called review and modification) is the process of reviewing child support guideline factors—such as income—at a new point in time, and applying the state's child support guidelines to re-determine the appropriateness of the child support award. There are two typical circumstances when this process could be used to adjust the child support order to reflect the noncustodial parent's ability to pay:

- ✓ In some cases, an initial default order may be set too high when the noncustodial parent fails to make a legal appearance. As discussed above, when default orders are entered, they are often based upon imputed income, and are not adjusted when actual current income information becomes available.



- ✓ In other cases, the noncustodial parent has experienced a decrease in income since the order was entered, often due to a change in employment status, but the order is not reviewed and adjusted to reflect this decline in income.

Child support orders for low-income noncustodial parents frequently are not subject to review and adjustment for a variety of reasons. Often, these parents are unaware of their right to have a review and adjustment of the order amount as circumstances change. In other instances, slow, cumbersome, and costly review and adjustment processes can discourage noncustodial parents from pursuing downward adjustments. In addition, some IV-D offices are reluctant to process adjustments that would lower the amount of the child support obligation.

Rules Governing Review and Adjustment and Thresholds

Prior to the enactment of PRWORA, federal law required that all AFDC cases be reviewed and, if justified, modified every three years. PRWORA granted more flexibility to states, allowing the choice of one of three options in making child support review and adjustments. States can continue to review and adjust awards based on the guidelines (as under pre-PRWORA), make a cost-of-living adjustment (COLA)⁴², or conduct an automated review process. If either of the latter two options is chosen by a state, the state must provide notice and opportunity to allow the parties to contest the adjustment and have the review made against the guidelines. Review and adjustments under these three options are only required at the request of the parties. If a party is on welfare (TANF or Medicaid), the request for a review can also be made at the request of the child support agency. States must give notice to parents every three years of the right to request a review.

If it has been greater than three years since the last review, federal law provides that adjustments do not require a proof of a change in circumstances. If it has been less than three years since the order was last reviewed, IV D agencies may place limits on the frequency of reviews or impose monetary thresholds before proceeding with the requested reviews or adjustments. Most states do limit reviews and require proof of a "substantial change in circumstances," (i.e., an increase or decrease in the obligor's or obligee's income if it has been less than three years since the last review). State percentage thresholds for these limitations range from 10 percent to 25 percent, and dollar thresholds range from a \$10 to \$100 monthly change in the order.⁴³

Policy concerns are raised by the requirement that parents meet thresholds to qualify for an adjustment of the child order amount. High thresholds may prevent some noncustodial parents from receiving award decreases which, although incremental, could encourage compliance with child support payment obligations. Many states maintain pre-PRWORA thresholds for all child support modifications, even though the Act prohibits this for cases where there has been no review in the past three years.



Office of Inspector General Report on Review and Adjustment

In 1999, OIG issued a report on "Review and Adjustment of Support Orders."⁴⁴ The purpose of the OIG report was to examine the states' methods of reviewing and adjusting child support orders since welfare reform. They reported, "Although all states can request review of a support order, some states vary their treatment of cases based on which parent made the request for review or if the adjustment will be a decrease, rather than an increase." Seventeen states proceeded with the adjustment process differently if a parent-requested review indicated that a decrease in the award was appropriate. The OIG also found that some local IV-D offices, acting independently of official state policy, did not conduct reviews for noncustodial parents. This report highlights the need for states to scrutinize how their review and adjustment processes are applied to low-income obligors.

In most states with judicial processes, review and adjustment can be slow, costly, and cumbersome. Typically, obtaining relief requires a motion be brought in court. As a practical matter, few noncustodial parents with low or decreased incomes can afford to hire an attorney to bring a motion for a child support order reduction.

If states want to ensure that child support awards reflect the current ability of the noncustodial parent to pay, they should implement more efficient and effective means for the review and adjustment of child support awards when the financial circumstances of noncustodial parents change. One method to accomplish this is for states to establish simple administrative processes for review and adjustment. Simple administrative processes are utilized in other countries, such as Australia and New Zealand, to readily adjust child support awards based upon current income.⁴⁵ New Zealand has a process whereby noncustodial parents can initiate adjustments if income changes. The noncustodial parent simply files a form showing the decrease in income and estimating the annual income for the year. The change in the child support order amount is automatic, and the agency checks the accuracy of the estimate at year end when actual annual income is known. An adjustment, called a "square-up", is then made if the estimate was not accurate.

Alaska ELMO

Alaska has had recent success with the implementation of the Electronic Adjustment (ELMO) of child support orders.⁴⁶ ELMO uses automated sources to capture income information and to automate the review and adjustment process. Project results from ELMO were significant, including a four-fold increase in the number of reviews. Over two-thirds (68 percent) of orders targeted for adjustment by ELMO (where at least one party agreed to pursue the action) were modified. The resulting modified orders better reflected the obligor's ability to pay.

West Virginia's Expedited Review and Adjustment Process

In 1999, West Virginia enacted a state law providing for an expedited review and adjustment process. A unique aspect of this process is that it is available only for substantial changes in circumstances due to employment changes. Changes are limited to: 1) decreases in income due to loss of employment, lay-off, reduction in hours, or other involuntary cause; or 2) increases in income due to promotion, change in employment, re-employment, etc.

The expedited process differs from the usual process in that there is no hearing unless the other party files an objection. The expedited process provides for filing a petition along with documentation of the change in employment status. The child support obligation is recalculated, and an order can be entered administratively unless a party objects and requests a hearing.

Review and modification is a prospective remedy. The "Bradley Amendment" under U.S. law makes unpaid child support a judgment by operation of law. It prohibits courts from retroactive modification of arrearages. However, this Amendment is directed at courts, not parties (and the state is a party for TANF arrearages). Therefore, it still allows room for compromise of arrearages in certain circumstances. A recent Office of Child Support Enforcement (OCSE) policy directive provides guidance on the forgiveness of arrears.⁴⁷ It provides that, while arrears cannot be retroactively modified, parties can agree to compromise arrears on the same grounds as any other judgment in the state. The directive also points out that states can forgive arrears when parents marry or remarry the obligor. This strategy is designed to financially assist couples who desire to marry. This is currently a state option, but could be made a mandatory requirement for the program.

Review and Adjustment Recommended Practices

- ✓ *Congress should require states to conduct review and adjustments of all child support orders at least every three years or upon exiting TANF.*
- ✓ *Child support agencies should automate their processes for review and adjustment to the greatest extent feasible.*
- ✓ *States should adopt administrative or expedited processes for review and adjustment. Expedited processes (such as those in West Virginia) allowing expedited reviews due to changes in employment status would make the system fairer to low-income noncustodial parents who frequently experience employment changes.*
- ✓ *Child support agencies should treat custodial parent and noncustodial parent requests for review and modification equally, and adjust order amounts downward as well as upward.*
- ✓ *Child support agencies should review thresholds for reviews outside the three year cycle (cases where a review and adjustment has been made in the past three years) and reduce excessive thresholds.*
- ✓ *Child support agencies should review thresholds for three year cycle reviews (cases where no review and adjustment has been made in the past three years) and eliminate thresholds for these reviews.*
- ✓ *Congress should mandate that arrears owed to the state are forgiven upon marriage by the parents.*

CONCLUSION

Child support is an important source of financial support for low-income, single parent families—usually headed by mothers. Child support has become even more critical in the post-welfare reform era. Having the financial support from both parents can make a difference to families with children struggling to make the transition from welfare to work and self-sufficiency. In addition, children in these families should receive strong emotional support from, and have a connection with, their fathers.

The child support system needs to do a better job in how it works with low-income fathers. The analysis in this report concludes that three specific changes to the child support system are of particular importance—reducing default orders, setting realistic child support orders at the outset, and making adjustments to orders to reflect changes in circumstances. These improvements will make the system more fair and equitable to low-income noncustodial fathers, while increasing their voluntary compliance with current support obligations.

Too often child support enforcement has been portrayed as an adversary of low-income fathers, and sometimes with good reason. However, the interaction between child support agencies and fathers does not have to be an adversarial one. Child support programs can be a positive influence on fathers and increase their ability to provide both financial and emotional support to their children if the programs focus on improving the up-front processes and focus on getting fathers started on the right track.



SUMMARY OF RECOMMENDATIONS

Recommendations for State and Local Program Action

Establishing Realistic Expectations for Low-Income Fathers

- ✓ Child support agencies should limit imputing income—both as to the amount and the circumstances under which it will impute income (i.e., voluntary unemployment or voluntary underemployment).
- ✓ Child support agencies should limit imputing income by reserving orders or setting zero orders in cases where no income information is obtained and review the case after 30, 60, or 90 days.
- ✓ Child support agencies should expand the use of automated location sources for income information.
- ✓ Child support agencies should promote an agency culture centered on obtaining “good orders” that include active involvement of the noncustodial parent and are based on accurate income information.
- ✓ Child support agencies should ensure that internal productivity standards do not contribute to high default order rates.
- ✓ Child support agencies should track jurisdiction default rates to assess whether there are any problems contributed by poor service of process.
- ✓ Child support agencies should promote communications with noncustodial parents that facilitate a better understanding of the nature and significance of the child support matter.
- ✓ Child support agencies should make use of the telephone and drop-ins to obtain more information from noncustodial parents on location and income. This is also an opportunity to educate noncustodial parents on their responsibilities.
- ✓ Child support agencies should re-write service of process documents to make them easily understandable.
- ✓ Child support agencies should ensure that documents are available in the language spoken by the noncustodial parent.
- ✓ Child support agencies should have interpreters readily accessible.
- ✓ Child support agencies should use simple cover forms and “YOU MUST APPEAR” language to emphasize importance of documents.
- ✓ Child support agencies should either encourage stipulations or encourage personal appearance before the adjudicatory body setting the obligation.
- ✓ Child support agencies should use informal responses as an opportunity to avoid defaults by encouraging stipulations or participation in the proceedings.
- ✓ Child support agencies should make courthouses and offices easily accessible.
- ✓ Child support agencies should require appearance by giving noncustodial parents a time and date certain to appear for appointments or court hearings.

- ✓ Child support agencies should require orders to show cause and bench warrants to compel attendance in paternity cases.
- ✓ Child support agencies should require a default hearing prior to entering default orders.
- ✓ Child support agencies should use multiple notices to the noncustodial parent prior to entering orders.
- ✓ Child support agencies should require personal service and not substitute service for paternity cases.
- ✓ Child support agencies should use multiple means of service, such as service by mail in addition to personal service.
- ✓ Child support agencies should carefully monitor the actions of process servers to ensure proper service of process.
- ✓ Child support agencies should use the telephone to call custodial parents, noncustodial parents and employers for locate information prior to making service attempts.
- ✓ Child support agencies should use all automated locate sources available.
- ✓ Child support agencies should encourage direct communication between caseworkers and process servers.
- ✓ Child support agencies should use special staff or private contractors to provide additional locate information in difficult cases.
- ✓ Child support agencies should reduce, eliminate, or cap front-end fees and add-on costs charged to low-income noncustodial parents.

Encouraging Voluntary Compliance with Child Support Obligations

- ✓ Child support agencies should consider case sorting as a means to provide client services tailored to the status of the case.
- ✓ Child support agencies should provide more intensive case management services to low-income fathers.
- ✓ Child support agencies should make customer service a high priority, and develop an organizational structure and policies and procedures supportive of this mission.
- ✓ Child support agencies should ensure that staff are trained and encouraged to treat low-income noncustodial parents in a customer-friendly manner.
- ✓ Child support agencies should make special educational and informational efforts to encourage voluntary compliance with child support obligations.
- ✓ Child support agencies should design procedures to monitor cases from the time the first payment is due, and take early intervention action as soon as payments are missed.
- ✓ Child support agencies should use automatic ticklers to notify caseworkers when payments are missed.



- ✓ Child support agencies should regularly offer referrals to programs for employment services, job training, substance abuse treatment, mediation and family counseling, and parenting education.
- ✓ Child support agencies should develop relationships with community-based organizations in order to provide referrals for services to fathers.
- ✓ Child support agencies should consider suspending payments while fathers are participating in responsible fatherhood programs, training or educational activities.

Responding to the Changing Circumstances of Low-Income Parents

- ✓ Child support agencies should consider making default orders provisional or temporary to permit changes if the noncustodial parent appears and provides actual income information
- ✓ Alternatively, child support agencies should consider allowing vacating or default orders, extending the time limit for modification of default orders, or expungement of arrears.
- ✓ Child support agencies should automate their processes for review and adjustment to the greatest extent feasible.
- ✓ Child support agencies should treat custodial parent and noncustodial parent requests for review and modification equally, and adjust order amounts downward as well as upward.
- ✓ Child support agencies should review their thresholds for reviews outside the three-year cycle (cases where a review and adjustment has been made in the past three years) and reduce excessive thresholds.
- ✓ Child support agencies should review thresholds for three-year cycle reviews (cases where no review and adjustment has been made in the past three years) and eliminate thresholds for these reviews.

Recommendations for State Legislatures

Establishing Realistic Expectations for Low-Income Fathers

- ✓ States should use state guideline reviews to reexamine the financial expectation of low-income noncustodial parents and ensure that they pay an equitable percentage of their income as compared to higher-income noncustodial parents.
- ✓ States should consider adding low-income adjustments to their guidelines, or revising their existing low-income adjustment, to better consider noncustodial parents' ability to pay. States also should consider how the addition of child care and the child's medical expenses to the base support amount would affect low-income noncustodial parents, and further depart from the father's ability to pay.
- ✓ States should use guidelines reviews to reassess adjustments for multiple families, particularly as they apply to low-income noncustodial parents.

- ✓ States should limit minimum orders to cases where the noncustodial parent has the realistic capability of making a current financial contribution.
- ✓ States should consider limiting the amount of minimum orders to no more than the amount passed-through and disregarded for welfare purposes.
- ✓ States should limit retroactive support by capping the period of retroactivity or restricting retroactive support only to cases when the noncustodial parent has attempted to evade legal authorities.
- ✓ States should eliminate respondent filing fees.

Encouraging Voluntary Compliance with Child Support Obligations

- ✓ States should increase the amount of pass-through and disregard that welfare families can receive.
- ✓ States should experiment with economic incentives to encourage payment of child support.
- ✓ States should use available federal and state funds for demonstration programs to provide services to noncustodial parents with the goal of increasing financial and emotional support to children.

Responding to the Changing Circumstances of Low-Income Parents

- ✓ States should adopt administrative or expedited processes for review and adjustment.

Recommendations for Federal Action

Establishing Realistic Expectations for Low-Income Fathers

- ✓ Congress should create a National Guidelines Commission to examine and make recommendations on state guidelines, including levels and adequacy of support amounts, treatment of multiple families, whether more uniformity in terms and guideline amounts is desirable, imputing income, minimum orders, retroactive support, and child care and medical support interaction.
- ✓ Congress should amend the Social Security Act to preclude State IV-D agencies from attempting to recover Medicaid birthing costs.

Encouraging Voluntary Compliance with Child Support Obligations

- ✓ Congress should change the child support funding system to provide incentives for states to pass-through and disregard child support to families on welfare.
- ✓ Congress should repeal the tax refund offset exception to "family first" distribution.
- ✓ Congress should fund demonstration programs providing services to noncustodial parents with the goal of increasing financial and emotional support to children.



Responding to the Changing Circumstances of Low-Income Parents

- ✓ Congress should require states to conduct reviews and adjustments of all child support orders at least every three years or upon exiting TANF.
- ✓ Congress should mandate that arrears owed to the state are forgiven upon marriage by the parents.

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ENDNOTES

¹ This report often uses the term "fathers" because it is a common reference in literature, although about 15 percent of noncustodial parents are mothers. When this report discusses the child support system in operational terms, it uses the term "noncustodial parents" because that is the more common reference in child support-specific materials.

² Sarah McLanahan and Irwin Garfinkel. *Unwed Parents: Myths, Realities, and Policymaking*. Center for Research on Child Wellbeing, Princeton University, Working Paper #02-15-FF.

³ See Irwin Garfinkel, Philip Robins, Pat Wong and Daniel Meyer. 1990. "The Wisconsin Child Support Assurance System: Estimated Effects on Participants." *Journal of Human Resources* 25:1-31; Daniel Meyer. 1993. "Child Support and Welfare Dynamics: Evidence from Wisconsin." *Demography*, Vol. 30, No. 1. In 1996, child support lifted about half a million children out of poverty, reducing poverty among these children by 5 percent. Elaine Sorensen and Chava Zibman. 2000. "Child Support Offers Some Protection Against Poverty." In *New Federalism*, No. B-10. Washington, D.C.: The Urban Institute.

⁴ Sorensen and Zibman. *Child Support Offers Some Protection Against Poverty*.

⁵ See Virginia Knox and Mary Jo Bane. 1994. "Child Support and Schooling." In *Child Support and Child Well-being*, Irwin Garfinkel, et al. (Eds.). Washington, D.C.: The Urban Institute Press. See also, generally, Irwin Garfinkel. 2001. *Assuring Child Support in the New World of Welfare*. Paper presented at the conference on the "New World of Welfare: Shaping a Post-TANF Agenda for Policy," February 1 and 2, 2001, Washington, D.C. Comments by Robert Lerman.

⁶ See Paula Roberts. 2002. *The Importance of Child Support Enforcement: What Recent Social Science Research Tells Us*. Washington, D.C.: Center for Law and Social Policy; Lucia Nixon. 1994. *Child Support Enforcement, Marital Dissolution, and Welfare Participation*. Department of Economics, Massachusetts Institute of Technology.

⁷ Ronald Mincy, Elaine Sorensen, and Ariel Halpern. 1999. *Encouraging the Formation and Maintenance of Two Parent Families*. Paper presented at the conference on Fathers and Child Support Reform. Washington, D.C.: The Urban Institute.

⁸ Omnibus Budget Reconciliation Act of 1993, Pub. L. No., 103-66, 107 Stat. 312.

⁹ Partners for Fragile Families is a ten site demonstration project in which faith-based and community-based responsible fatherhood programs are working together with welfare, workforce development, and child support agencies to assist young, low-income, unwed parents: 1) establish paternity, 2) increase their financial ability to pay support, and 3) work together in raising their children. The program was developed by the National Center for Strategic Nonprofit Planning and Community Leadership (NPCL).

¹⁰ A Colorado study found that, fifteen months following delivery, only 26 percent of parents who voluntarily acknowledged paternity and were in the child support system had a child support order. Center for Policy Research. 1995. *The Child Support Improvement Project: Paternity Establishment*. Denver, CO.

¹¹ U.S. Census Bureau. 1999. *Custodial Mothers and Fathers and Their Child Support*. Current Population Reports. Washington, D.C.

¹² U.S. Census Bureau. 1999. *Custodial Mothers and Fathers and Their Child Support*. Current Population Reports. Washington, D.C.



¹³ Ronald Mincy and Elaine Sorensen. 1998. "Deadbeats and Turnups in Child Support Reform." *Journal of Policy Analysis and Management*, Vol. 17, No. 1, 44-51.

¹⁴ Elaine Sorensen. 1999. *Obligating Dads: Helping Low-Income Noncustodial Fathers Do More for Their Children*. Washington, D.C.: The Urban Institute.

¹⁵ Elaine Sorensen and Chava Zibman. 2001. "Poor Dads Who Don't Pay Child Support: Deadbeats or Disadvantaged?" In *New Federalism*, No. B-30. Washington, D.C.: The Urban Institute.

¹⁶ Child Support Enforcement Amendments of 1984, Pub. L., No. 98-378 (1984), codified at 42 U.S.C. § 667 (a) (2001); Family Support Act of 1988, Pub. L. No. 100-485, § 103(a) (1988), codified at 42 U.S.C. § 667 (b)(2)(2001).

¹⁷ Family Support Act of 1988, Pub. L. No. 100-485, § 103(a) (1988), codified at 42 U.S.C. § 667 (b)(2)(2001).

¹⁸ Elaine Sorensen. *Obligating Dads: Helping Low-Income Noncustodial Fathers Do More For Their Children*; Daniel Meyer. 1998. "The Effect of Child Support on the Economic Status of Nonresident Fathers." In *Fathers Under Fire: The Revolution in Child Support Enforcement*, Irwin Garfinkel et al. (Eds.). New York, NY: Russell Sage Foundation. pp. 67-93.

¹⁹ Jo Peters. 1999. *Overcoming the Barriers to Collections, A Final Report of the Research Project. Child Support Performance Measurements: A Test for Working Hard-to-Collect Cases*. Olympia, WA: Washington State Division of Child Support.

²⁰ See, for example, Elaine Sorensen. *Obligating Dads: Helping Low-Income Noncustodial Fathers Do More For Their Children*; Vicki Turetsky. 2000. *Realistic Child Support Policies for Low Income Fathers*. Washington, D.C.: Center for Law and Social Policy.

²¹ To learn more about how states are conducting service of process and using default orders for low-income noncustodial parents, default order practices were examined in: New York City; Los Angeles County, California; Harris County, Texas; King County, Washington; and Hennepin County, Minnesota. Existing literature and information on policies and practices were also reviewed in six other jurisdictions: Alaska; Virginia; Maine; Connecticut; Maricopa County, Arizona; and Adams County, Colorado.

²² Not all jurisdictions were able to provide default order rates. The table indicates those reporting default order rates based either on actual data or estimates.

²³ While currently there is no research showing a causal relationship, anecdotal evidence exists which makes intuitive sense. A research study in Colorado found that for administratively established orders, payments were lowest for those established by default as compared to those established by administrative stipulations. Nancy Thoennes and Jessica Pearson. 2001. *Understanding Child Support Arrears in Colorado: An Empirical Analysis Based on a Random Sample of Cases with Arrears*. Denver, CO: Center for Policy Research.

²⁴ Arizona Rules of Civil Procedure, Rule 4.1.

²⁵ For example, in Texas, substitute service can be to anyone over 16 who answers the door, provided personal service is attempted first and there is an affidavit verifying the address. California and Arizona require the person to be 18 or older in cases of substitute service. In Connecticut, substitute service is only allowed if: 1) an affidavit is secured which attests that the noncustodial parent is not employed by the military, and 2) the Postal Service has verified the address for the intended individual within the last 30 days.

²⁶ Jessica Pearson and Kay Tuschen. 1997. *Assessment of an In-house Service of Process Program: Denver County Division of Child Support Enforcement*. Denver, CO: Center for Policy Research.

- ²⁷ Fragile Families Research Brief. 2001. *Unwed Fathers, the Underground Economy, and Child Support Policy*. Brief No. 3.
- ²⁸ Office of the Inspector General. 2000b. *The Establishment of Child Support Orders for Low-Income Noncustodial Parents*. #OEI-05-99-00390. Washington, D.C.: U.S. Department of Health and Human Services.
- ²⁹ Office of the Inspector General. July 2000a. *State Policies Used to Establish Child Support Orders for Low-Income Noncustodial Parents*. #OEI-05-99-00391. Washington, D.C.: U.S. Department of Health and Human Services.
- ³⁰ Paula Roberts. 2001. *An Ounce of Prevention and a Pound of Cure: Developing State Policy on the Payment of Child Support Arrears by Low-Income Parents*. Washington, D.C.: Center for Law and Social Policy. Appendix 2.
- ³¹ Office of the Inspector General. #OEI-05-99-00390.
- ³² Office of Child Support Enforcement. 2000. *State IV-D Program Flexibility with Respect to Low-Income Obligor*. PIQ 00-03. Washington, D.C.: U.S. Department of Health and Human Services.
- ³³ Office of the Inspector General. #OEI-05-99-00391.
- ³⁴ "Voluntary compliance" as used in this report does not refer to the state of mind of the noncustodial parent. Rather, it means payments are made either directly by the noncustodial parent or through automatic income withholding without the agency having to resort to more coercive methods of enforcement such as license revocations, bank attachments, passport denials, contempt actions, etc.
- ³⁵ Daniel Meyer and Maria Cancian. 2001. *W-2 Child Support Demonstration Evaluation Phase 1: Final Report*. Institute for Research on Poverty. University of Wisconsin - Madison.
- ³⁶ See, for example, Wendell Primus and Charita Castro. 1999. *A State Strategy for Increasing Child Support Payments from Low-Income Fathers and Improving the Well-Being of Their Children Through Economic Incentives*. Washington, D.C.: Center on Budget and Policy Priorities.
- ³⁷ Paul Legler. 1996. "The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act." *Family Law Quarterly*, Vol. 30, No. 3.
- ³⁸ Virginia Division of Child Support Enforcement. 2001. *Barriers to the Payment of Court-Ordered Child Support: A Pilot Project to Design a Case-Management Model to Improve the Regularity of Payment*. Virginia Department of Social Services.
- ³⁹ See Dana Reichert. 1999. *Broke But Not Deadbeat: Reconnecting Low-Income Fathers and Children*. Denver, CO: National Conference of State Legislatures, Chapter 12.
- ⁴⁰ See, for example, Elaine Sorensen. *Obligating Dads: Helping Low-Income Noncustodial Fathers Do More for Their Children*.
- ⁴¹ See Cynthia Miller and Virginia Knox. 2001. *The Challenge of Helping Low-Income Fathers Support Their Children: Final Lessons from Parents' Fair Share*. New York, NY: Manpower Demonstration Research Corporation; Fred Doolittle and Suzanne Lynn. 1998. *Working with Low-Income Cases: Lessons for the Child Support Enforcement System from Parents' Fair Share*. New York, NY: Manpower Demonstration Research Corporation; Virginia Knox and Cindy Redcross. 2000. *Parenting and Providing: The Impact of Parents' Fair Share on Paternal Involvement*. New York, NY: Manpower Demonstration Research Corporation; Fred Doolittle, Virginia Knox, Cynthia Miller and Sharon Rowser. 1998. *Building Opportunities, Enforcing Obligations: Implementation and Interim Impacts of Parents' Fair Share*. New York, NY: Manpower Demonstration Research Corporation.



⁴² COLAs use a consumer price index to periodically update the award amount.

⁴³ Office of Inspector General. 1999. *Review and Adjustment of Support Orders*. #OEI-05-98-00100. Washington, D.C.: U.S. Department of Health and Human Services; See also, Paula Roberts. 1999. *Setting Support When the Noncustodial Parent is Low Income*. Washington, D.C.: Center for Law and Social Policy (memo).

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